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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,899	03/29/2001	Jim Paul Haughwout	06975-144001 / Member Ser	5374
26171	7590	05/18/2006	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			THEIN, MARIA TERESA T	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/819,899

Applicant(s)

HAUGHWOUT, JIM PAUL

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 90, 94, 96-97, 107, 111, 112, 120, 124-125, and 133-150 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 90, 94, 96, 97, 107, 111, 112, 120, 124, 125 and 133-150 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's "Amendment in reply to action mailed on September 20, 2005" filed on February 21, 2006 has been considered with the following effect.

Applicant's response by virtue of renumbering the claims has overcome the Examiner's objection.

Claims 90, 107, 112, 120, and 125 have been amended. Claims 91, 108, and 121 have been cancelled. Claims 91-93, 95, 98-106, 108-110, 113-119, 121-123, 126-132 have been canceled. New claims 136-150 are added. Claims 90, 94, 96-97, 107, 111, 112, 120, 124-125, and 133-150 are pending in this application and an action on the merits of these claims follows.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 90, 94, 96-97, 107, 111, 112, 120, 124-125, and 133-150 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 6,553,113 to Dhir et al. in view of U.S. Patent No. 6,665,644 to Kanevsky et al.**

Regarding claim 90, Dhir discloses a process comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (col. 8, lines 7-11; col. 11, lines 32-42); and

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- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services (col. 3, lines 6-11; col. 3, lines 23-31; col. 8, lines 7-11; col. 12, lines 8-10), the leveraging including:
  - identifying a caller identity or a first caller attribute related to the caller (col. 7, lines 42-51; col. 8, lines 7-11; col. 11, lines 61-65);
  - storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch (service(s) or servicing the call) preference of the caller, as an additional attribute (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58);
  - searching a first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute, where the first electronic database includes information gathered about the caller prior to the call (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58; col. 11, lines 36-44; Figure 7);
  - routing the service call to a human operator for presentation of the first sales pitch to the caller (col. 6, lines 11-12; col. 8, lines 14-15);

However, Dhir does not disclose a preference of the caller not to receive any sales pitch and the omitting to search a database of potential sale pitches based upon at least the additional attribute of the call and routing the call to a human operator. Dhir does disclose customer profile behavior data module and strategies module and routing codes data module (col. 6, lines 44-46). Dhir further discloses human- assisted call processing (col. 6, lines 10-11).

Kanevsky, on the other hand, teaches a preference of the caller not to receive any sales pitch and the omitting to search a database of potential sale pitches based upon at least the additional attribute of the call and routing the call to a human operator (abstract; col. 4, line 66 – col. 5, line 4; col. 5, lines 32-35; col. 7, lines 46-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include a preference of the caller not to receive any sales pitch and the omitting to search a database of potential sale pitches based upon at least the additional attribute of the call and routing the call to a human operator, as taught by Kanevsky, in order to provide data associated with the voice of a user which can efficiently and automatically make use of the data available in transactions (Kanevsky, col. 60-62).

Regarding claims 94, 96, 110, 112, 125, and 137-140, Dhir discloses a preference to receive a certain type of sales pitch; populating the first electronic database prior to the call with information indicative of the caller; populating the first electronic database with information indicative of a response by the caller to the first sales pitch; and populating the first electronic database with information indicative of responses made by the caller in response to past sales pitch presentations (col. 5, lines 51-62; col. 7, lines 15-33; col. 7, lines 54-67; col. 8, lines 1-15).

Regarding claims 97, 111, 124, and 141, Dhir substantially discloses the claimed invention, however, it does not disclose populating the database with information indicative of past misbehavior of the caller. Dhir discloses customer profile behavior module, which stores and reflects on customer profiles and behavior (col. 7, lines 115-

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17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decision predictions about caller needs (col. 7, lines 30-34).

Kanevsky, on the other hand, teaches populating the database with information indicative of past misbehavior of the caller (abstract; col. 4, line 66 – col. 5, line 4; col. 5, lines 32-35; col. 7, lines 46-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include populating the database with information indicative of past misbehavior of the caller, as taught by Kanevsky, in order to provide data associated with the voice of a user which can efficiently and automatically make use of the data available in transactions (Kanevsky, col. 60-62).

Regarding claims 107 and 120, Dhir discloses a system and computer program comprising:

- an identification component or code segment that determines a caller identity related to a caller seeking assistance from a customer service call center (col. 7, lines 34-51; col. 11, lines 49-66);
- a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming call from the caller, a sales pitch (service(s) or servicing a call) preference of the caller (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58)

- a search component configured to identify in the first electronic database component or code segment that identifies the attribute related to the caller based on the caller identity (col. 7, lines 34-51; col. 11, line 49-col. 12, line 11; col. 12, lines 56-66); and
- a call router that routes the service call to a human operator to assist the caller (col. 6, lines 11-12; col. 8, lines 14-15).

However, Dhir does not disclose a preference of the caller not to receive any sales pitch and configured to omit to search a database of potential sale pitches based upon at least the additional attribute of the call and a call router to a human operator. Dhir does disclose customer profile behavior data module and strategies module and routing codes data module (col. 6, lines 44-46). Dhir further discloses human-assisted call processing (col. 6, lines 10-11).

Kanevsky, on the other hand, teaches a preference of the caller not to receive any sales pitch and configured to omit to search a database of potential sale pitches based upon at least the additional attribute of the call and a call router to a human operator (abstract; col. 4, line 66 – col. 5, line 4; col. 5, lines 32-35; col. 7, lines 46-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include a preference of the caller not to receive any sales pitch and configured to omit to search a database of potential sale pitches based upon at least the additional attribute of the call and a call router to a human operator, as taught by Kanevsky, in order to provide data associated

with the voice of a user which can efficiently and automatically make use of the data available in transactions (Kanevsky, col. 60-62).

Regarding claims 133-135, Dhir substantially discloses the claimed invention, however, it does not expressly disclose information indicative of the past misbehavior; routing the call to a human operator based on the past misbehavior; a call router bypass a sales pitch selection to route to a human operator; and to assist the human operator to take the service call based on the past misbehavior. Dhir discloses customer profile behavior module which stores and reflects on customer profiles and behavior (col. 7, lines 115-17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decision predictions about caller needs (col. 7, lines 30-34).

Kanevsky, on the other hand, teaches information indicative of the past misbehavior; routing the call to a human operator based on the past misbehavior; a call router bypass a sales pitch selection to route to a human operator; and to assist the human operator to take the service call based on the past misbehavior (abstract; col. 4, line 66 – col. 5, line 4; col. 5, lines 32-35; col. 7, lines 46-54; col. 8, lines 40-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include information indicative of the past misbehavior; routing the call to a human operator based on the past misbehavior; a call router bypass a sales pitch selection to route to a human operator; and to assist the human operator to take the service call based on the past misbehavior, as taught by Kanevsky, in order to provide data associated with the voice



of a user which can efficiently and automatically make use of the data available in transactions (Kanevsky, col. 60-62).

Regarding claim 136, Dhir substantially discloses the claimed invention, however, it does not explicitly disclose a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product; searching, a second database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product; route the service call to a human operator; and assisting the human operator. Dhir discloses customer profile behavior module which stores and reflects on customer profiles and behavior (col. 7, lines 115-17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decision predictions about caller needs (col. 7, lines 30-34).

Kanevsky, on the other hand, teaches a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product; searching, a second database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product; route the service call to a human operator; and assisting the human operator (abstract; col. 4, line 66 – col. 5, line 4; col. 5, lines 32-35; col. 7, lines 46-54; col. 8, lines 40-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include a preference of

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the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product; searching, a second database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product; route the service call to a human operator; and assisting the human operator, as taught by Kanevsky, in order to provide data associated with the voice of a user which can efficiently and automatically make use of the data available in transactions (Kanevsky, col. 60-62).

Regarding claims 142-146, Dhir discloses searching the second electronic data base for a second sales pitch for the caller immediately after the caller provides the response to the first sales pitch (col. 8, lines 1-25; col. 12, lines 1-30; Figures 7-9); wherein assisting the human operator in presenting the first sale pitch comprises displaying at least a portion of the selected first sales pitch on a display of the human operator (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15); wherein the first sales pitch is identified with the second database only when at least the additional attribute of the caller indicates that the caller satisfies a predetermined criterion (col. 5, lines 51-62; col. 7, lines 54-67; col. 9, lines 51-55; col. 12, lines 56-66); wherein the first caller attribute indicates a geographic residence of the caller, and identifying the first sale pitch includes making unavailable selection one or more sales pitches of the second electronic database based upon the geographic residence of the caller (col. 6, lines 24-34; col. 11, lines 32-37); and wherein the additional attribute of the caller includes a credit status for the caller and identifying the first sales pitch includes selecting the first

sales pitch for the caller only when the credit status of the caller is satisfactory (col. 7, lines 15-51; col. 10, lines 40-47).

Regarding claims 147-149, Dhir discloses transferring the caller to a commercial partner that provides a product or service that corresponds to the selected first sales pitch if the caller has expressed interest in the first sales pitch (col. 4, lines 30-31; col. 7, lines 23-26; col. 12, lines 7-18); communicating information related to the caller to the commercial partner substantially in real time (col. 5, lines 14-16; col. 7, lines 5-8); and wherein the information comprises information related to the first sales pitch presented to the caller (col. 7, lines 15-51; col. 8, lines 1-25; col. 12, lines 1-18).

Regarding claim 150, Dhir discloses transferring the caller to a commercial partner that provides a product service that corresponds to the selected first sales pitch, wherein the commercial partner provides a second sales pitch to the caller; receiving feedback information form the commercial partner regarding a response by the caller to the second sales pitch; and populating the first electronic database with information indicative of the response by the caller to the second sale pitch. (See at least col. 2, lines 23-33; col. 8, lines 44-47; col. 11, lines 14-23; col. 12, lines 6-17; col. 13, lines 41 – col. 14, line 5; col. 14, lines 47-52; Figure 12)

### ***Response to Arguments***

Applicant's arguments with respect to claims 90, 94, 96-97, 107, 111, 112, 120, 124-125, 133-150 have been considered but are moot in view of the new ground(s) of rejection.

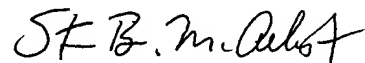
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mtot  
May 15, 2006



STEVE B. MCALLISTER  
PRIMARY EXAMINER